

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 392 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JEMLABHAI P DHANAK

Versus

STATE OF GUJARAT

Appearance:

MR DEEPAK M SHAH for Petitioner
MR YF MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 07/01/97

ORAL JUDGEMENT: (Per Pandya, J.)

1. This is an appeal filed through jail and the learned Advocate Shri D.M. Shah was specially appointed for this purpose under the orders of the Court.

2. The accused-appellant was facing charge under

Section 302, I.P.C. before the learned Additional Sessions Judge of Baroda, at Chota Udepur, in Sessions Case No.28 of 1987.

3. Charge Ex.2, at page 6, states that on 23.1.1986, after the land measurement was carried out by Surveyor and as a result when the accused found that some of the trees of the border of two fields are likely to go into the area now being measured which is stated to be of the deceased, on that very day he shot two arrows at the deceased and caused his death. Name of the deceased is Vasia Bhuru.

4. The prosecution has two eye-witnesses to rely upon for bringing home the charge against the accused, one Mangliben, daughter of the deceased and another Segli, daughter in law of the deceased. They both claim to have seen the deceased and that the two arrows were shot at a distance of 7 to 8 feet only while the accused was standing behind a tree. It is nobody's case that looking to the time when the incident occurred, the witnesses could not have seen any part of the event.

5. No doubt, in the cross-examination of Mangliben, P.W.I, Ex.6, circumstances have been brought out to the effect that she was cooking the evening meal inside her house and, therefore, she came out only on hearing cries of her father. To that extent, therefore, the defence may claim that she came on the scene only after the incident was over. Nevertheless, the second witness was very firm in her testimony and though she has been cross-examined on the aforesaid aspect, she has stood the test very firmly.

6. So far as the nature of injury and the type of weapon used is concerned, hardly anything was required to be proved by the prosecution because the body, as examined by the doctor for postmortem purpose, had in it arrows embedded at the place they have struck after they were shot by the accused. Postmortem Note is at Ex.10 and Dr. Sharma has done the examination.

7. In our opinion, therefore, the learned Additional Sessions Judge, who held the accused guilty by his judgment dated 22.4.1988, has come to the correct conclusion and, therefore, there is no question of our interfering by way of appeal in his conclusion. The appeal is, therefore, dismissed and the order of the Trial Court is confirmed.

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